THE UNIVERSITY OF CHICAGO

ROUND TABLE

PATENTS AND ECONOMIC PROGRESS

A Radio Discussion by WILBER KATZ
EDWARD LEVI *and* ROBERT WILSON

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Around the Round Table . . . .

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EDWARD H. LEVI, professor of law in the Law School of the University of Chicago, has recently returned to the University after several years in special government service. He did his undergraduate work at the University of Chicago and also received his law degree from the University of Chicago in 1935. Professor Levi studied at the Yale School of Law, where he was granted a J.S.D. degree in 1937. He has been connected with the University of Chicago Law School since 1936. In 1940 he went into government service and served as a special assistant to the Attorney-General and as first assistant in the Anti-trust Division. He is a contributor to *War and the Law* (1945).

ROBERT E. WILSON, chairman of the board of the Standard Oil Company of Indiana, studied at Wooster College, where he received his Ph.B. degree, and at Massachusetts Institute of Technology, where he received his B.S. degree in chemical engineering. He has been associated with the research laboratory of the General Electric Company, with the Bureau of Mines of the United States government, and with the Massachusetts Institute of Technology Research Laboratory of Applied Chemistry, of which he was director from 1919 to 1922. Mr. Wilson became associated with the Standard Oil Company of Indiana in 1922 and served in various capacities as assistant director of research, assistant to the vice-president in charge of manufacturing, and as director and vice-president in charge of research and development. From 1935 to 1944 he was vice-chairman and later chairman of the board and chief executive officer of the Pan-American Petroleum and Transport Company. He has been chairman of the board and chief executive officer of the Standard Oil Company of Indiana since 1945. He received the Chemical Industry Medal in 1938 and the Perkin Medal in 1943. He has been granted over ninety patents. Mr. Wilson is a regular contributor to various professional magazines.

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Patents and Economic Progress

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MR. LEVI: "Patents and Economic Progress" is a controversial subject. It is also a technical subject. Most discussions of the patent system end up in verbal broadsides. I propose that we try to present an analysis of the problems to be met in considering the present system.

MR. KATZ: But our problems are of the relation of the patent system to economic progress; and the problem of economic progress is the problem of increasing the standard of living—producing more products at lower cost and of passing on to the public the benefits of modern technology.

MR. LEVI: Possibly, then, the best way to start is to ask Wilson to explain what a patent is.

MR. WILSON: A patent is in essence a grant by the government to the first inventor of a process or article of manufacture of the right to exclude others, for seventeen years, from the practice of his invention. It is granted only where the inventor makes prompt and full disclosure of his invention.

MR. KATZ: Your definition emphasizes the fact that a patent does not really assure to the patentee the right to use his invention, because he may be blocked by other patents . . . .

MR. WILSON: That is right.

MR. KATZ: . . . . or by the needs of further research.

MR. LEVI: We ought also to emphasize that a person can get

a patent under our Constitution because the giving of the patent is a contribution to the sciences and the useful arts.[1]

MR. KATZ: The constitutional provision states that that is the objective. We have also to remember that a bureau for the issuance of patents was set up early in our history—and a large bureau it is. We should point out further that, even after patents have been issued by the Patent Office, they still have to run the gauntlet of litigation in the courts.

MR. LEVI: Since we have a controversial and a technical subject, I think that we ought to try to divide it into three parts and to discuss, first, the part which patents play in the advancement of American industrial progress; secondly, to state the extent to which patents may be a deviation from the American competitive free-enterprise system; and, third, to deal with some of the patent reforms which have been proposed. Let us move, then, first to the part which patents play in the advancement of American industrial progress.

MR. WILSON: Patents have a number of closely related functions. In the first place, there is the desire to reward the inventor with some reasonable compensation. In this case we measure the reward very closely by the actual value of what he invented, because that is all he gets out of it—the right to control that invention for a limited period.

Even more important, particularly in the modern age of exchange of scientific information between different fields, is the encouragement of prompt disclosure. Frequently, the most im-

[1] Article I, section 8, of the Constitution of the United States says in part: "The Congress shall have power . . . . To promote the Progress of Science and the Useful Arts by securing for limited Times to Authors and Inventors the exclusive Right to their Writings and Discoveries. . . . ."

The first congressional act on patents was passed April 10, 1790. It placed the granting of patents in the hands of the Secretary of State, the Secretary of War, and the Attorney-General. Under an act of July 4, 1836, the Patent Office was established, which was to be headed by a commissioner of patents, and the general outline of the patent law was fixed.

portant application of invention is in some field entirely different from which it first came. By encouraging prompt disclosure and publication of results, the whole tempo of industrial progress is speeded up.

MR. LEVI: I wonder if we would say that the problem today is much more one of stimulating investment rather than one of helping the original inventor. Would you agree?

MR. WILSON: That is a very large factor, because it does cost more and more money these days to make new inventions and new progress. The inventions which can easily be made have already been made. We really have to organize an expensive scientific expedition to bring out important new facts or to develop valuable new processes under present conditions. The oil industry, for example, is today spending around fifty million dollars a year in research and development. It needs the encouragement of the patent system to make the industry do that.

Further, when we want to put a new process on the market, unless we have a patent system which will protect the man in making a major investment, the invention is very likely to lie unused because no one wants to put a great deal of money into a thing and then, if it is successful, to have it immediately copied by dozens of competitors.

MR. LEVI: There have been two changes, then, have there not, since the patent system was first established? One change is that there is much more group research than there used to be. The patent system requires the existence of an inventor rather than a group team. And the other change in the situation is that we are much more interested in stimulating the investment which is required to make possible research, because research is much more complicated and needs a much greater investment than it originally did.

MR. WILSON: That is true.

MR. LEVI: I wonder whether we could say that if we were to weaken the patent system, that would really hurt the disclosure of inventions and would really slow the industrial progress. Is that true?

MR. WILSON: Yes, I think so. It would not have a great deal of effect on research by the larger companies, because they do research primarily for the effect on the saving of costs or for the improvement of their own products. But many companies cannot afford to do expensive research unless they have a chance to collect royalties if they do find something of value, so that a weakening of the patent system would tend to discourage research by independent inventors and small companies more than it would to discourage research by large companies, which would do it anyway.

MR. LEVI: Of course, Wilson, you have placed your argument about the patent system very centrally on the problem of getting inventors to reveal what they have done. One of the real problems, I think that we would all agree, is that some patents do not actually reveal the processes which have been invented.

Mr. KATZ: If the patents do not reveal, then they are invalid as patents. Litigation often turns on the question of whether the patent did reveal what was essential to the process; and if it does not, it is not a patent.

MR. LEVI: Let us then move to the second part of our analysis and discuss the very central question of the relationship between the American free competitive system and the patent system.

It is frequently said that the patent system (and I am quoting from an eminent patent lawyer) "forms the bulwark of the

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American system of democratic free enterprise." Actually that is not true, is it?

MR. KATZ: I do not know where we would end up, but we would certainly have to start with the proposition that, under the American system, competition is relied upon to furnish the bulwark and to contribute to economic progress. It is competition which forces the extending to the public, in the form of lower prices, the benefits of advanced technology.

MR. LEVI: And we are faced with the central fact that the patent system establishes a monopoly and that a monopoly seems to be contrary to the notion of a competitive enterprise system.

MR. WILSON: I do not know that that is necessarily true. Certainly, America developed greatly in the pioneer years because it did grant people a monopoly in the ownership of their farms or their homesteads. The fact that a man had something that he could regard as his very own was a great stimulus. Monopolies are not necessarily contrary to the competitive free-enterprise system.

MR. KATZ: We would have to distinguish, I suppose, between a monopoly as restricting the market, as the market for a single house or a single farm, and a monopoly of any general product. The man who had a monopoly on all the housing available in Chicago would certainly have a monopoly which we would not defend in the same way that we may be defending some aspects of the patent system today.

MR. WILSON: That is quite true.

MR. LEVI: If we recognize that there is a monopoly, which, of course, is what the patent system sets up, we ought now to stress the fact that it is a limited monopoly.

MR. WILSON: It is limited through a period of seventeen years from the date when the patent is granted.

MR. KATZ: Is it really seventeen years? I have often heard it said that the seventeen is extended by quite a number of years, in many cases, because the period begins with the filing of the application in the Patent Office. It often takes some years for a patent application to work through the Patent Office.

MR. WILSON: My statement was that it is limited to seventeen years from the date the patent is granted. There have been suggestions made that, in order to avoid undue filing in the Patent Office, the time should be given another limit of not more than twenty years after the date of the first application and not more than seventeen years after the grant. That is a suggestion which has considerable merit.

MR. LEVI: Of course, it seems to me there is room for inquiry into the problem of whether seventeen years would not be too long now. After all, industrial progress is much greater today than it used to be. Seventeen years is a much longer time than it used to be. Possibly ten years, or even five, would be sufficient to give the protection which we want to give to the patentee.

MR. WILSON: That gets back to the basic question of whether we can afford to weaken our incentive for invention and research at a time when the costs of invention and research are increasing so rapidly. It is true, however, that seventeen years is a relatively long period today as compared with 1861, when the term was first set.

One difficulty of limiting the period is that sometimes inventors make inventions before the world is ready for them. When the invention first appears, it may lack the development of some later need which brings it into value. A man might get no reward at all for his patent for the first ten years, and it would seem unfair to deprive him of the right of its later use.

MR. KATZ: We have to remember also that this seventeen-year period may be a very long one for a patent which is taken out by a company which already has a head start in its industry. Let us take the example of the Aluminum Company of America. If it has a seventeen-year head start with respect to any new development, it may be impossible for any competitor ever to catch up.

MR. LEVI: Possibly we ought to move now to the problem of what are usually called patent abuses. Is not one of the first abuses in the granting of too many patents?

MR. WILSON: I do not think that there can be too many patents if they really represent contributions and real inventions which are helpful and useful.

On the other hand, I agree with you that the Patent Office grants many unimportant patents which probably never should be granted and which are thrown out by the courts if they are really ever important enough to come to litigation.

MR. KATZ: They may do their damage, though, in the meantime, before the litigation winds its lengthy way through the courts and ends up in the invalidating of the patent.

MR. WILSON: That is quite true. The Patent Office has a very difficult job, in view of the complications of modern science and technology, in getting people who are able adequately to appraise the value of the disclosures which are presented to them. They lack laboratory facilities, knowledge of the arts. There needs to be a strengthening all along the line of this first screening of patent applications.

MR. LEVI: A second abuse which is usually referred to is patent suppression. I wonder if you think that this is a frequent practice.

MR. WILSON: I am quite sure that it is not. As a matter of

fact, several people who have investigated the matter have reported that they were not able to find a single instance of a suppressed patent, using "suppressed" in the sense in which it is ordinarily used.

Of course, there are many unused patents. In fact, I should say that probably not more than 25 per cent of patents are actually used, because they represent new methods which are inferior to present methods or which are not comparable with some other method of accomplishing the same result. But a company cannot and does not afford to buy up patents merely for the sake of suppressing them.

MR. KATZ: It is, of course, very difficult to find any authentic instance of a patent which has been suppressed, but the present Commissioner of Patents has said that a few have been suppressed by their owners. Many thousands have been suppressed by obsolescence, which so quickly overtakes many an invention in an age like the present.

MR. LEVI: We ought also to mention that President Roosevelt in 1938 recommended amendment of the patent laws on the theory that there were cases of suppression of patents. Your position, Wilson, is, as I take it, that this does not occur—or very infrequently, if at all?

MR. WILSON: No authentic instance has ever been brought to my attention or has been cited in the literature on the subject.

MR. KATZ: I suppose that one special angle of the problem of suppression is what has sometimes been called a blocking or a fencing patent, where, after taking out a patent on one process, the same concern takes out a patent on an alternative, simply in order to prevent others from developing the alternative process and so to enable it to get back its expenditure in the development of the first.

That would come under the head of a suppression, but it has

more to say in its defense. It can be more easily defended than some of the other examples.

MR. LEVI: I am not so sure of that. I think that that is a patent suppression case. That is a case of getting a patent on a thing which you do not intend to use. The only reason that you get a patent on it is so that you will be protected in your use of something else.

MR. WILSON: The example is more generally in another way. If a man is working in a particular field, he tries to develop several different methods of accomplishing a certain result, and he takes patents on all of them. As they are further investigated, he finds one is better, and naturally that is the one which is used. The others are not used because they are inferior to the first method or the one which is finally chosen.

MR. LEVI: A third abuse which is said to exist is the use of the patent pool. I wonder if it would be accurate to say that the patent pool in itself is an abuse.

MR. WILSON: It depends on what you mean by a "patent pool." That is one of those bad phrases which is flung about to cover all sorts of arrangements—some of which are very proper and constructive and some of which are probably violations of the anti-trust law.

MR. KATZ: What is an example of one which would be constructive?

MR. WILSON: There is the common exchange of patents between companies which are active in research in a given field, so that they can each go ahead and use the best possible process which can be worked out by the inventions of different laboratories.

It also is of great value to those who want to secure licenses to get licenses from several different companies who are active

in research instead of having to go separately to each company and never being sure that they were covered.

MR. LEVI: You are referring to the so-called "open-patent pool," are you not, which does really open up an industry and makes it possible for an industry to use the different techniques and processes which have been developed in it?

That is quite different, however, from the case from which I want to quote. It is a document which refers to the kind of patent pool which perhaps should be condemned. This is a patent pool in which the participants write, "All manufacturer licensees will help to build up licensor's dominating position."

In other words, this is not a cross-licensing agreement but one in which patents are piled on patents in the hands of one centralizing company. Then it, of course, can decide whether to license or not to license. That is quite different from the kind of pool about which you were talking.

MR. WILSON: That is bad, I think, if serious restrictions are imposed on the right of the individual patent owners to license their own patents as they see fit. Ordinary cross-licensing arrangements do not involve such restrictions.

MR. KATZ: The clearest case of the bad patent pool would be a pool composed of several dominant companies in an industry which refused any further licensing of new competitors.

MR. LEVI: I think that we ought to make it clear when we are talking about a patent pool that we are not talking about a theoretical situation which might make no difference. A patent pool, with a dominating position, really can keep newcomers out of an industry.

For example, Edsel Ford testified that the licensed Automobile Manufacturers Association would not license his father, because it regarded him as a fly-by-night producer. If those patents had been held up, he would have been kept out of the automobile

industry. This is a real question about new industry getting going.[2]

MR. KATZ: It sometimes has been suggested that one of the difficulties of patent licensing arises from territorial exclusions or limitations or from other types of limitation on the license privilege. Do you think that that is an abuse?

MR. WILSON: In general, no. Territorial restrictions are often reasonable and proper. When a man is given a complete monopoly, it is really desirable to encourage him to break down that monopoly piece by piece so far as he can profitably do so.

For example, let us suppose that a man is making a heavy article in an eastern factory. He might not want to license a man to make it across the street from him, but he might be glad to license a company in Texas to manufacture in Texas and a company in California to manufacture in California.

If we say to him, however, that we cannot grant any licenses unless he throws open the whole world to his competitor, we are simply discouraging the granting of licenses, whereas what we should try to do is to encourage the granting of licenses.

MR. LEVI: Of course, that again is a problem of the patent

[2] In 1879 G. B. Selden, a patent lawyer of Rochester, New York, applied for the basic automobile patent. His claims comprehended the whole motorcar and were written in terms of technical categories rather than specific devices. It covered the parts, apparatus, mechanism, and gadgets. However, it was not until 1895 that his patent was actually granted, and in 1899 he granted an exclusive license to the Electric Vehicle Company. Soon after, vigorous suits were started against all other unauthorized manufacturers, dealers, and customers. After long court proceedings, a number of firms finally took out licenses to manufacture under the Selden patent and joined an organization to protect their mutual benefits. This organization was fought by an organization of independents which resulted in a long series of legal controversies. But in 1909 the federal court of southern New York upheld the validity of the Selden patent (*Electric Vehicle Co.* v. *Duerr*, 172 F. 923 [1909]). Henry Ford, refusing to accept the decision, appealed the case, and in 1911 a new decision was handed down by the Circuit Court of Appeals which held that the Selden patent was to be sharply restricted and that Ford was not an infringer (*Columbia Motor Car Co.* v. *Duerr*, 184 F. 893 [1911]).

pool. Because, while it may not be objectionable for a patentee to license one patent in such a way as to divide territories, when there is a patent pool there is a general exchange of patents or a piling-up of patents in a field, and no one knows just exactly what they cover. What really happens is that two companies divide the business between them, as the chemical business, or the oil business, or any general field. That certainly is contrary to our notion of the competitive system.

MR. WILSON: Of course, there is much greater justification for restricting the point of manufacture than there is for restricting the point of sale, which does tend to cut down competition unduly.

MR. LEVI: We have been talking about patent abuses which seem to fall under the heading of what might normally be called anti-trust violations. It certainly would be an anti-trust violation if the patents were not there. I think that those abuses do cause us some concern. For example, there is the illustration of a patentee using a patent on an electric flashlight bulb in such a way as to reduce the life of the bulb so that he could sell more bulbs. Maybe that is done more in Europe than here. I am thinking of the agreement in the famous lamp cartel in Europe in which agreement was finally reached that it would be made impossible to make an electric lamp which would last more than a thousand hours. This was done on the argument that if the bulb lasted longer, there would be fewer sales. That is certainly not the kind of thing which a believer in the patent system would want to justify, is it?

MR. WILSON: That is correct.

MR. KATZ: One of the other angles closely related to the anti-trust problem is that of patent licensing with a stipulation as to what the price shall be that the licensee may charge. This is one of the types of restrictive licensing which the Temporary Na-

tional Economic Committee urged should be outlawed, along with restrictions on quantity and on use and even within geographical area.[3]

MR. LEVI: Of course, there are some really grotesque examples of the effect of trying to license with a price-fix. Frequently the companies doing that try to differentiate the market—that is, have one price for one purpose, and another price for another thing. That gets them into all kinds of difficulties.

For instance, there is the example of trying to put poison in dyes in order to insure that they will be used only for paint and not for textiles. There has been the effort to distinguish between the use of denture materials so that fifty dollars can be charged for something which otherwise might be sold for fifty cents.

It seems to me that is quite an abuse. That also would not be advocated, I believe, as part of the patent system, would it?

MR. WILSON: Certainly whenever you put in the element of price-fixing, you are under suspicion of having something more than a patent-licensing agreement. I would not say that it was never justified, but certainly seldom.

MR. KATZ: We have been talking about abuses of good patents. One of the biggest abuses is with respect to bad patents —patents which ultimately can be thrown out on litigation but create an enormous burden of litigation, particularly when the suits are brought not only against patentees but against all their customers. These lead to the scaring-away of those customers and contribute to the extension of the monopoly of the patentee.

MR. LEVI: That is known as the patent blitzkrieg. It seems to me that the point which you have raised has another aspect. If you can tie patents to a price-fix, then an industry may want to

[3] See Walton Hamilton, *Patents and Free Enterprise* ("Temporary National Economic Committee Monograph," No. 31 [Washington: Government Printing Office, 1941]).

uphold bad patents. They may not wish to show up the fact that the patents should never have been granted, because they think that they get the permission to divide territories or to fix prices.

I am thinking of this kind of thing which I quote from an industry file. It reads: "A great many of the patents which we are operating under are very weak, and if we wished to, we could break them ourselves and not pay royalties, but good business judgment, I believe, justifies the idea that paying royalties, even on weak patents, in order to maintain a price control picture is helpful."

MR. WILSON: That just shows that, in general, price control with a patent is an undesirable thing.

MR. KATZ: If there are all these abuses, what are some of the proposals which have been made for dealing with these abuses? One of the most frequently heard is that there should be compulsory licensing—that a patentee should have to license all comers.

MR. WILSON: One of the greatest objections to compulsory licensing is the difficulty of arriving at a fair fee. The old American art of horse-trading is frequently the only way in which the question of what is proper to charge can be decided.

Another unfair thing from the standpoint of the licensee is that he might make a very large investment in putting a product on the market only to find that some man who was not familiar with the situation would forfeit a compulsory license to someone else at a very low fee, and this would jeopardize the entire original investment. It would greatly weaken the value of a patent if compulsory licensing were put into effect.

On the other hand, if a patent lay unused for five or six years, there would be a good deal more justification for some form of compulsory licensing for such a patent.

MR. KATZ: That, I take it, would be something like the system which is in operation in Great Britain.

But is there not another field in which compulsory licensing might be important? That is in the field of public health—drug inventions, for example.

MR. WILSON: It seems to me that, of all the examples which you might give of the value of our patent system, we can cite the tremendous stimulation which it has given to the research departments of our great drug companies who have brought out so many outstanding inventions over the last five or ten years. They realize, I think, pretty clearly, that they do have a public responsibility for making sure the public can get, at reasonable prices, these products. But I certainly would not say that the public interest would be served by compulsory licensing, because it would certainly discourage a great deal of research.

MR. LEVI: We ought to note that the present Commissioner of Patents, Commissioner Ooms, has taken the position that if the patent stands in the way of the public's access to devices badly needed for public health or safety, then he would be in favor of compulsory licensing. Of course, we might get that kind of thing under your proposal, Wilson, that if a patent were unused for five years, then there could be some form of compulsory licensing.

MR. KATZ: There is one field in which the use of the patent system leads to very serious questions—international affairs. That includes now the field of patents in atomic-energy developments. If the ordinary patent system were to be operative in that area, it might well be that various proposals which are under consideration for international control of atomic developments would be frustrated.

MR. WILSON: If there is any ground for an exception to the ordinary patent law, it is in this tremendously important field of atomic energy, especially since the government has been financing most of the research. But, even there, if the patent system is

done away with, some really adequate method of rewarding research and invention must be developed.

MR. KATZ: There are quite a number of methods which might be developed, such as extraordinary tax deductions or reimbursements of costs, worked out under appropriate statutes.

MR. LEVI: We ought to point out possibly that the encouraging of research is not solely, is it, a problem of the patent system?

MR. WILSON: No. Of course, university research is very little dependent on patents; and the same is true of research in government laboratories in general.

MR. KATZ: One example of such laboratories is the extensive laboratory dealing with forest products research which the government has maintained for many years. There are also the development facilities in the Department of Agriculture.

MR. LEVI: The suggestion of a science foundation, which was made by Dr. Vannevar Bush in *Science, the Endless Frontier*, is really a suggestion of other ways to aid research. I wonder if our discussion has not pointed up the need for that kind of aid.[4]

MR. WILSON: Yes, we really have in this country a shortage of the basic research which needs to be done. The patent system and industrial competition support a tremendous amount of industrial research, but we are using up some of the basic scientific information which should be developed at a more rapid rate.

I believe that Dr. Bush's report is, on the whole, very sound in indicating that we need a science foundation to train more scientists and to encourage basic research.

MR. LEVI: We have had a long list of abuses which we have discussed. It seems to me that we have not accepted compulsory

[4] Vannevar Bush, *Science, the Endless Frontier* (Washington: Government Printing Office, 1945).

licensing as the remedy. We have said that we think that a science foundation might help to develop research. I wonder whether we really have hit upon any way of correcting the abuses of the patent system.

MR. KATZ: Many of the abuses which we see are related to activities which were either violations of the anti-trust laws or very close to that. Would not a really strict enforcement of anti-trust laws cure most of the abuses with which we have been dealing?[5]

MR. WILSON: Better still would be a clarification of some of them.

MR. LEVI: The problem of the anti-trust law enforcement is a problem of having enough teeth in the remedy so that you can stop the abuses from recurring so that the government is not playing a game with violators who make money out of the violation.

[5] The Sherman Anti-trust Act says, in part: "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

"Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty. . . . . Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce in any Territory of the United States or of the District of Columbia, or in restraint of trade or commerce between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or with foreign nations, is hereby declared illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, ... That the word 'person,' or 'persons,' wherever used in this act shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any States or the laws of any foreign country." This statute was passed on July 2, 1890.

MR. KATZ: What additional teeth would be necessary?

MR. LEVI: I would like to see a system in which if there is an intentional violation of the patent laws, then the patent would be forfeited.

MR. WILSON: Who is going to look into a man's mind and decide what is intentional?

MR. LEVI: In summary, then, we have said that a patent is a governmental grant of a monopoly. The purpose of the grant is to encourage science and the useful arts. The monopoly is justified as an economic matter because of the costs of research and developmental work. The patent system also promotes prompt disclosure and thereby speeds up the whole tempo of modern research.

But, since a patent is a monopoly, the patent system represents a deviation from the theory of a free and competitive enterprise system. Where patents are abused or patents granted too freely, this deviation can become extremely important.

We do not believe that compulsory licensing is the answer, however. We think that the problem of patent abuse is not a problem of the individual patent-holder or of the ordinary cross-licensing agreement. We think rather that it arises where patent-holders combine their forces to accomplish an illegal extension of the patent monopoly.

We also believe that many of the problems concerning the abuse of patents would vanish if the Patent Office would do a better job of screening patent applications. Further, it might be wise to reduce the period of time given in the monopoly grant.

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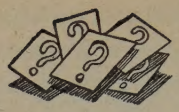
An industry study, if fairly conducted, would reveal perhaps helpful answers as to the appropriate length of time for a patent monopoly in a quickened industrial age, and it would help in the devising of clearer rules to protect the public from the misuse of patents.



What Do *You* Think?

1. Is the present system of patenting adequate for today's problems of a highly complex industrial system? How is patent policy related to achieving high levels of production and employment? What are the problems involved today in research and developmental work?

2. Is the granting of patents a denial of the traditional American system of free competitive enterprise? On what terms is it a justifiable monopoly? What do you think should be the time limit? How has our economy speeded up?

3. What is a patent? What are its purposes? What are the effects of a patent grant? What is the background and history of the granting of patents? What is the public interest? How can it be protected?

4. What are the abuses in the present patent system? How can patents be used to foster business monopoly? How have patents been used to foster international cartels? What is a "patent pool"? Cross-licensing? Territorial exclusion? To what extent can these result in abuse of patent privileges? How can patent licensing be used to fix prices?

5. Should the present patent law be reformed? What are the proposals for dealing with the problem of patents? Would compulsory licensing in the public interest be a good idea? Should the length of a patent right be limited? Should patents when "wilfully" abused be canceled? Should fewer patents be granted? Should the present patent system be eliminated? Would stricter enforcement of the anti-trust legislation end the abuse of patent rights? Discuss these various proposals in view of the means by which you feel progress can best be achieved.

6. Should atomic-energy development be a field for patents? Do you think that the rights on this revolutionary development should be held publicly? How do you think the public interest can be most genuinely served in relation to the development of atomic energy? Discuss.

7. Would you favor the creation of a science foundation as a better means by which to support patents? Who should have the patent rights for research done with government money? What should be the relation of university basic research and industrial research?

More on This Topic

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